IN THE HIGH COURT OF DELHI AT NEW DELHI

W.P.(C)2959/2005

AJAY GUPTA .... Petitioner through
through Mr.Kaanan Kapur, Adv.

Versus

COMMISSIONER OF INCOME TAX ...Respondent
through Mr. R.D. Jolly, Sr. Standing Counsel

Date of Decision : April 2, 2007

CORAM:
HON'BLE MR. JUSTICE VIKRAMAJIT SEN
HON'BLE MR. JUSTICE J.P. SINGH

1. Whether reporters of local papers may be allowed to see the Judgment? Yes

2. To be referred to the Reporter or not? Yes

3. Whether the Judgment should be reported in the Digest? Yes

J U D G M E N T

VIKRAMAJIT SEN, J.:(Oral)

1. The question which calls for consideration in this Petition concerns the date from which the Income Tax Department is

liable to pay interest on the amount of money/assets seized from the Petitioner in the course of a Search conducted on 2.7.2002 under Section 132 of the Income Tax Act, 1961 (IT Act). In the course of this Search, cash amounting to Rs.35,15,000/- was discovered at the premises of the Petitioner/Assessee, out of which there was a Seizure of Rs.33,00,000/-. It is the case of the Department that during the Block Assessment proceedings the Assessee could sufficiently explain only a part of the cash seized during the Search. The Block Assessment proceedings were completed vide Assessment Order dated 30.7.2004. According to the Department, the Assessee's undisclosed income aggregated Rs.12,43,232/-, attracting a tax demand of Rs.7,83,236/- together with a penalty of Rs.7,83,236/- under Section 158BFA(2) of the IT Act, thus raising a total demand of Rs.15,66,471. Pursuant to this Order, the balance amount of Rs.17,33,529 was “released” on 27.9.2004 as stated in the Affidavit of the Assistant Commissioner of Income Tax (Central Circle 5, New Delhi). Upon appeal against the Assessment Order, the CIT(A) vide its Order dated 15.12.2004 deleted Rs.12,43,232 as undisclosed income assessable to tax along with the penalty imposed. The Assessing Officer (AO) gave effect to the Order-in-appeal and framed 'nil income' assessment on 24.12.2004, releasing the remaining amount of Rs.15,66,471/-.

Thus, the entire Seizure of Rs.33 lakhs was ordered to be released (in contradistinction to 'refunded') to the Petitioner.

2. With respect to the payment of interest, it has been stated in the Affidavit by the Assistant Commissioner that as per the provisions of Section 132B(4) of the IT Act, interest was paid on the sum of Rs.17,33,529/- as follows: (a) 01-11-02 to 31.08.03 (10 months) at the rate of 0.66 per cent per month = Rs.1,14,411/-; (b) 01-09-03 to 30-07-04 (11 months) at the rate of 0.5 per cent per month = Rs.95,342/-; thus aggregating the sum of Rs.2,09,753/-. This interest is stated to have been determined in consonance with ITNS 150 dated 7.3.2005, and was paid to the Assessee vide Refund Voucher No.830974 dated 7.3.2005. This computation as well as the rate of interest has not been challenged before us, although the period for which it has been granted is assailed by the Petitioner. The entire seized amount having been returned, the only remaining controversy concerns the element of interest payable by the Department to the Petitioner.

3. According to the Petitioner, it had informed the Department at the time of the Search itself and thereafter in detail on

11.7.2002 that the seized cash belonged to two companies, namely, Arkaylite Electricals, and, Contimeters & Electricals, and had been duly accounted for in their Books of Accounts. A bald and unsubstantiated statement has been made by the Commissioner of Income Tax to the effect that the Assessee could only explain the source of part of the cash at the time of the completion of the Assessment proceedings on 30.7.2004, possibly mindful of the delay on his part in completing the adjudication.

4. The claim of the Petitioner on account of interest is adumbrated in the following table:

Amounts Released (Rs)	Released on	Period material to computation after 120 days from the date of Search i.e. 1.07.02 to the date of Release	Interest paid (Rs.) & period of payment	Period of interest unpaid/remaining
17,33,529	27.9.04	1.11.02 to 27.9.04	Rs.2,09,753/- for period: 1.11.02 to 30.7.04	1.8.04 to 27.9.04 (2 months)
15,66,471	24.12.04	1.11.02 to 24.12.04	31,328/- for period: 1.09.04 to 31.12.04	1.11.02 to 31.8.04 (22 months)
33,00,000/-				**24 months**

5. According to learned counsel for the Department, the date on which the Assessment is completed is the relevant date after which interest will cease to run for the purpose of Section 132B; and thereafter interest is to be calculated under Section 244A of the IT Act. However, the absence of any reference to Section 244A in the pleadings of the Department, manifests that reliance on this Section during the course of arguments was an after-thought. So far as Rs,17,33,529/- is concerned, no valid explanation has been offered as to why interest has not been given upto the date when payment was actually tendered. The Department cannot be exonerated or excused from payment of interest for the period of two months, being the hiatus between the passing of the Assessment Order and the date on which the interest was tendered.

6. Let us now revert to the statutory provisions which apply to the conundrum before us. The provision of Section 132B(i) appear to us to be of far-reaching dimensions, if not of draconian nature. It permits assets seized under Section 132 or requisitioned under Section 132A to be adjusted against existing liability. The assumption must be that the Search and Seizure provision under Section 132 or the Requisition proceedings under

Section 132A will not be lightly or obliquely resorted to by the Department. In other words, the highly invasive action under Section 132A of the Act, in which the privacy of a citizen is rent asunder, should not be employed as a surrogate of Section 226 of the Act for effecting recoveries of tax dues from litigious assesses.

7. In the present case we are not concerned with this aspect of the statute since it is Section 132B(4)(b) that is at the fulcrum of the conundrum. It clarifies that “interest shall run from the date immediately following the expiry of the period of one hundred and twenty days from the date on which the last of the authorisations for search under section 132 or requisition under section 132A was executed to the date of completion of the assessment under section 153A or under Chapter XIV-B”. The period of 120 days (90 days upto 30-9-1984) was previously stipulated in Section 132(5) of the IT Act until its omission by the Finance Act 2002 with effect from 1.6.2002. Section 132(5) also prescribed that the remaining portion of the assets must be 'forthwith released' to the person from whose custody they were seized after satisfaction of the tax liability existing against such person. At that time, i.e. prior to the amendments brought about

by the Finance Act 2002, Section 132B(4)(b) envisaged payment of simple interest at the rate of 15 per cent per annum on the retained money computed "from the date immediately following the expiry of six months from the Order under sub- section (5) of Section 132." It is also worth emphasizing that seized assets for which a valid explanation has been furnished and which therefore do not partake of the nature of undisclosed income or assets cannot be retained even if there are outstanding tax-dues.

8. Since the Search was conducted on 2.7.2002, the Petitioner has claimed interest commencing from the expiry of a period of 120 days thereof, i.e., 1.11.2002. It is noteworthy that the relevant provisions, i.e. Section 132B(4) make no reference to Section 244A on which reliance has been placed by learned counsel for the Respondent in the course of his final arguments. We must take note of the fact that the Department has tendered interest of the sum of Rs.2,09,753/- calculated for the period 1.11.2002 to 30.7.2004, i.e. the date of the Assessment Order for the Block Period starting from 1.4.1996 to 1.7.2002. However, it has failed to pay interest from 1.8.2004 to 27.9.2004, for no justifiable reasons. Predicated on the said Assessment Order dated 30.7.2004, after deducting the income-tax and penalty from

the seized sum of Rs. 33 lakhs, there was no further justification not to release the balance sum of Rs.17,33,529/- forthwith. In the event, this sum was actually released after some delay under cover of the Department's letter dated 27.9.2004. As has been noted above, interest at the rate of 0.66 per cent per month was tendered for the period 1-11-2002 upto 31-08-2003. It appears to us that this may have been for the reason that by virtue of the Taxation Laws (Amendment) Ordinance, 2003, subsequently cemented by the Taxation Laws (Amendment) Act, 2003, the rate of interest stood reduced to 0.5 per cent per month with effect from 8-9-2003. Accordingly, interest at the higher rate should have been calculated upto 8-9-2003. However, since this point had not been urged by the Petitioner, we leave the matter to rest.

9. In our opinion the purpose of stipulating the period of 120 days cannot be over-emphasised. What the statute expects is that where a Seizure has taken place consequent upon a Search, the decision declining to release or return the amount to the Assessee must be taken with extreme expedition. This is evidently how the Department understood the provisions of the IT Act since it has itself computed interest commencing from the expiry of the said period of 120 days, that is, 1.11.2002. Perhaps

it would have been logical for Parliament to clarify that if a decision to hold or withhold monies/assets discovered during a Search is not taken with the prescribed period of 120 days, interest would start to run from the date of the Seizure itself. Otherwise, granting a blanket moratorium for the period of 120 days loses logicality. This question has not been raised on behalf of the Assessee and therefore we need not enter into an exercise of jural engineering to impart what, prima facie, appears to be a proper interpretation of the Section.

10. Section 132B(4)(a) imposes on the Central Government the liability to pay simple interest at a rate that has been varied from time to time, on the amounts which have been duly accounted for, together with the surplus amount for which no valid explanation is forthcoming after deduction or reduction of outstanding tax dues. Thereafter, Section 132 B(4)(b) specifies that interest under "Chapter C – Powers", being Sections 131 to 136, shall be payable for the period commencing from the 121st day after the last authorisation for the Search upto the date of completion of the assessment relating to the Search. In the present case, since the Petitioner has claimed interest only from the date on which the Search was conducted, we shall assume that that was also the

day on which the last authorisation for the Search was recorded. The following Table will elucidate that the rate of interest payable in Search cases was not always the same as interest payable on delayed Refunds under Section 244A, to which our attention has been drawn by learned counsel for the Revenue:

	S.132B(4)(a)	**S.244A**
1989	15% p.a	1.5% p.m
1991	15% p.a	1% p.m
2001	15% p.a	0.75% p.m
2002	8% p.a	0.66% p.m
8-9-2003	6% p.a	0.5% p.m
2006	6% p.a	0.5% p.m

11. Even though the rate of interest payable under Section 132B(4)(a) and Section 244A is the same since 2002 there was a difference prior thereto. This was obviously for the reason that Parliament considered Search proceedings to be distinct from ordinary assessment proceedings. We have already observed that carrying out a Search is an invasion of the privacy of a citizen. It is for good reason that the IT Act imposes stringent safeguards and restrictions on the conduct of Searches. For these very reasons Parliament was mindful of setting down a comparatively short period of 120 days within which it expected summary proceedings relating to Searches to be completed. In fact this

period has been successively reduced by Parliament, since Section 132B as originally inserted into the Act by Income Tax (Amendment) Act, 1965 specified the period to be six months. This period was thereafter reduced to 120 days by virtue of Finance Act, 2002. Obviously, Parliament is mindful of the fact that where assets and money belonging to a citizen are taken into custody by the Department consequent upon a Search, a decision should be taken promptly as to what portion thereof is to be retained.

12. At first blush, therefore, in our understanding, it must logically be expected that the rate of interest payable under Section 132B(4) should be higher than that prescribed in other provisions, with the expectation that the component of interest would act as a deterrent to dilatory decision by the Department in the context of Searches. On further consideration, it is equally unacceptable for the Revenue to drag its feet or create obstacles or delays for refunding monies to assessees. In fact, in *Union of India through Commissioner of Customs (Import & General) -vs-Honda Siel Cars India Ltd, MANU/DE/0258/2007,* we have taken serious note of this deleterious and objectionable practice which has become rampant in the Department. Perhaps for this reason

the Legislature has made the same rate of interest applicable to both eventualities. However, in this process the period separately carved out under Section 132B(4) has lost most of its significance. After careful cogitation it appears to us that it would be expedient to prescribe a higher rate of interest under Section 132B(4) than that prevailing for Refunds under Section 244A. Further, Section 153B prescribes a period of two years for completion of assessment or reassessment by the Assessing Officer which vide the Finance Act, 2006 has been further reduced to a period of 21 months in those cases where the last of the authorisations for Search under Section 132 was executed during the financial year commencing on the 1st day of April, 2004 or any subsequent financial year. This goes to show, yet again, the intent of the Legislature to impress upon the Department the need to deal with all Search and Seizure matters expeditiously.

13. In respect of the amount of Rs.15,66,471/- it will be recalled that this amount was the aggregate of the amount computed by the AO as the income tax demand of Rs.7,83,236/- on the amount found to be undisclosed income, namely, 12,43,243/- together with penalty in the like sum of Rs.7,83,236/- under Section

158BFA(2). Had these Orders not been reversed by the Commissioner of Income Tax (Appeals) [CIT(A)] in the Judgment dated 15.12.2004, there would have been no foundation for the claim of interest on this amount. It is trite that the Order of the AO merge with that of the CIT(A). As a consequence of this amalgamation, complete parity must be accorded to the sum of Rs.17,33,529/- and Rs.15,66,471/-, thereby necessitating identical treatment to them. In other words, if interest is payable with effect from 1.11.2002 on the first sum, it would be axiomatic that it would also be payable with effect from the same date in respect of second amount also. In support of this proposition we shall only mention that our attention has been drawn to the decisions in *Chloride India Ltd. -vs- Commissioner of Income-Tax, West Bengal I*, [1977] 106 ITR 38, *Bardolia Textile Mills -vs- Income-Tax Officer, Circle II, Ward-E, Surat*, [1985] 151 ITR 389 and *Commissioner of Income-Tax -vs- M.L. Sanghi*, [1988] 170 ITR 670.

14. We find no justification whatsoever for placing reliance on Section 244A of the IT Act which is found in Chapter-XIX dealing with Refunds. A reading of Sections 237 and 238 makes it clear that it pertains to amounts of tax paid by the Assessee or on its

behalf. It cannot cover or be equated to involuntary acts such as seizure of assets in the course of a Search conducted under Section 132 of the IT Act which events are covered in the fasciculous of Chapter XIII-C. Section 153A is to be found in Chapter-XIV prescribing the procedure for assessment in case of search and requisition, and has been dealt with as a distinct subject even in that Chapter. Similar is the position so far as reference to Chapter XIV-B is concerned. None of these provisions prescribe the period from which interest is payable. In the event it is found that there is no justification for the retention of the items seized by the Department in the cases of a Search, the procedure for assessment should not be confused with provisions stipulating the time within which a summary decision is to be taken in respect of money or assets seized during a Search.

15. Our attention has also been rightly drawn to the decisions in *K.A. Karim -vs- Commissioner of Income-Tax*, [1990] 186 ITR 97 and *Manohar Lal -vs- Commissioner of Income Tax*, (2001) 168 CTR(Del) 558. It has been enunciated in ***Sandvik Asia*** *Ltd. -vs- Commissioner of Income-Tax*, [2006] 280 ITR 643(SC) that interest is payable by way of compensation on amounts

wrongfully retained, including payment of interest on interest wrongfully retained.

16. As has already been noted above, computation of interest under Section 132B(4) has been calculated with effect from 1.11.2002 on which there is no contest at all. The Block Assessment proceedings were completed in terms of Assessment Order dated 30.7.2004, pursuant to which the sum of Rs. 17,33,529/- was returned on 27.9.2004. No Appeal has been preferred by the Department on this score. So far as this sum of Rs.17,33,529/- is concerned, interest under Section 132B(4) became payable on 30.7.2004, which is the outer limit of the period prescribed under section 132B(4)(b). Since the payment was eventually made on 27.9.2004, the Petitioner would be entitled to compensation on account of delay for the period 1.8.2004 to 27.9.2004. We direct that compensation/damages, in terms of ***Sandvik Asia***, be paid by the Respondents to the Petitioner on the sum of Rs.17,33,529/- for the period 1.8.2004 to 27.9.2004 at the rate of nine (9) per cent per annum.

17. So far as the sum of Rs.15,66,471/- is concerned the Appeal was decided, (in favour of the Petitioner), by the CIT(A) by Orders

dated 15.12.2004. The Respondents are liable to pay interest on the said sum from 1.11.2002 to 15.12.2004 under Section 132B (4)(b). The Respondents have without any justification whatsoever paid only a sum of Rs.31,328/- as interest for the period 1.9.2004 to 31.12.2004 (the date of the AO is 30-7-2004) glossing over and ignoring the period 1-11-2002 to 31-8-2004 (It should be recalled that the Assessment Order was passed on 30-7-2004 and thus there is no plausible reason for tendering payment with effect from 1-9-2004). The Respondents are accordingly directed to pay interest under Section 132B(4)(b) on the said sum of Rs.15,66,471/- for the period 1.11.2002 to 15.12.2004 at the rate of 0.66 per cent per month upto 8-9-2003 and thereafter at the rate of 0.5 per cent per month. The question that arises is whether compensation/damages in the ***Sandvik Asia*** mould should be granted in respect of sum of Rs.15,66,471/- also. Since the decision of the AO was reversed in Appeal, there may not have been any justification for granting damages. However, since the period envisaged under Section 132B(4)(b) specifically commences from the expiry of 120 days from the date on which the last of the authorisations for Search was executed (which in the present case is 1-11-2002), the fact that interest has inexplicably been tendered only commencing

from 1-9-2004 is indefensible. Therefore, in addition to payment of interest at the aforementioned rate, the Petitioner shall also be entitled to receive from the Respondent compensation/damages for the period 1-11-2002 to 1-9-2004 at the rate of nine per cent per annum.

18. The writ petition is allowed in the above terms. The Petitioner shall also be entitled to costs quantified at Rs.5,000/-.

(VIKRAMAJIT SEN)
JUDGE

(J.P. SINGH)
JUDGE

April 2, 2007
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